GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Popular Cycle Trading Co., 14/1, Corner Sadar Patrappa Road, Bangalore-2.

Award of the Labour Court, Bangalore—Published.

Read the following papers :—

1. Letter No. 264/71-72, dated 6th May 1971 from Sri A. N. Sundara Murthy, Presiding Officer, Labour Court, Bangalore

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated the 6th day of May, 1971.

Present.

Sri A. N. SUNDARA MURTHY, B.A.,B.L., *Presiding Officer*

Reference No. 10/70.

I Party

Shri C. S. Hanumanthappa, C/o Subbalakshmi Lunch Home Gayatrinagar, Bangalore-21.

Vs.

II Party

The Management of Popular Cycle Trading Co. 14/1, Corner Sadar Patrappa Road, Bangalore-2.

APPEARANCES

For the I Party:—Sri Allampalli Venkataram, General Secretary of Bangalore General Labour Union, and/or Sri S. Krishnaiah, President of Mysore State Bharathiya Mazdoor Sangh.

For the II Party:—Sri V. Viswanath Rai, Advocate, 29, Grant Road, Bangalore-1.

REFERENCE

(Government Order No. FCL 105 LLD 70, dated 1st April 1970)

AWARD

The Government of Mysore in their Order No. FCL 105 LLD 70, dated 1st April 1970 have referred the Industrial Dispute between the Workman Sri C. S. Hanumanthappa and the Management of Popular Cycle Trading Co., 14/1, Corner Sardar Patrappa Road, Bangalore-2, to this Court for adjudication in exercise of the powers conferred under Clause 'C' of sub-section (10) of the Industrial Disputes Act, 1947.

The points of Dispute are:—

"Is the Management of Popular Cycle Trading Co., 14/1 Corner Sadar Patrappa Road, Bangalore-2, justified in terminating the services of Sri C. S. Hanumanthappa Cycle Fitter with effect from 30th April 1969? If not, is the said worker entitled for reinstatement with back wages and continuity of service or to any other relief ?".

On behalf of the First Party Workman Claim Statement is filed as follows:—

The Second Party concern is proprietory concern dealing with Cycle parts. The I Party Workman was employed by the Second Party on 23rd June 1967 as a Cycle Fitter on a monthly salary of Rs. 100-00. The I party Workman was discharging his duties to the entire satisfaction of the Proprietor of the II party. On 30th April 1969, the II party Management alleged various charges against the Ist party stating that his work was un-satisfactory. He was disobedient and he was wantenly delaying in execution of work and terminated his services. The II party is not justified in terminting the services of the I party workman for the following gounds:—

(a) Even though various charges were alleged no enquiry was conducted.

(b) No chargesheet was served on the workman and no opportunity was given let alone a reasonable opportunity.

(c) The services the I Party workman have not been effectively terminated by the 2nd Party Management.

(d) No written order of termination has been served on the workman.

(e) Even though the conciliation officer advised the 2nd Party to reinstate the workman, the 2nd party Management refused to reinstate on the plea that as their shop was shifted from the main road their business as dwindled and under these circumstances the management could no longer engage the services of the

(f) The action of the management is in violation of the principles of natural justice.

(g) The action of the Management amounts to nothing but victimisation and unfair labour practise.

It is prayed that the 1st party workman may be reinsta

On behalf of the 2nd party rejoinder is filed as follows :—

It is admitted that the 2nd party is a proprietory concern. The 1st party workman was most irregular in his attendance. In spite of this fact the 2nd Party had not taken any disciplinary action against the 1st party workman. It is denied that the 2nd party made several charges against the 1st party workman as stated in the claim statement and straight away terminated the services of the 1st party. The 1st party workman even without informing the 2nd party deserted and abondoned his post. Now the 2nd party shifted the shop to the interior from the main road and the 2nd party cannot employ the 1st party workman. It is prayed that the reference may be rejected with costs.

The following issues are framed ;

I Whether II party is justified in terminating the services of I party workman

II Whether I party workman abandoned his services?

III Whether the termination of the services of I party workman amounts to victimisation an dunfair labour practice ;

IV Whether I party workman is entitled to reinstatment with back wages and continuity if service ;

V To what relief, of any I party workman entitled to ?

The main point for consideration is whether the 2nd party terminated the services of the 1st party workman or the 1st party workman abandoned the services. On behalf of the 2nd party the proprietor of the 2nd party is examined as a M. W. I. and one Sri Nawaz Khan is examined as M. W. 2. M. W. 1 states that he did not terminate the services of the 1st party workman. He states that the 1st party workman stated that he did not want to continue any further and he went away after taking his pay upto 30th April 1969. He states that he sent M. W. 2 to fetch the 1st party workman four or five days after he left his services. Again he sent M. W. 2 four or five days thereafter to fetch the 1st party workman, he did not turned up. He states that the 1st party workman is the Cycle Shop of Muniyappa. He states that he has seen the 1st party in his shop once on 3rd January 1971 and one year prior to it also he saw him in the said shop but he has not able to start the date. M. W. 2 states that the 1st pary workman received his pay on the night of 30th April 1969 and he did not turn up again. He states that since the 1st party workman did not turn up, M W.I had sent him to bring him twice. He states, four days after he left his services he went to the house of the 1st party workman for the 1st time. He told him that M. W. 1 asked him to bring him. The 1st party workman stated that he did not want to work with him and he would not come. M. W. 2 states three or five days later he went to him again on his way to the house of his Mother-in law. Then the 1st party workman was not found at his residence. A boy came out and told him that the 1st party worman is working in the Cycle Shop of Muniyappa at Guttahalli. Thereafter he went and saw him in the cycle shop of Muniyappa and asked him to come and work again. He refused.

He came and told M. W. 1 those facts.

On behalf of the 1st party workman the person who is running the cycle-shop is examined as M. W. 1. He states, he does not know the 1st party workman and he did not work with him. In the course of the cross examination of W.W. 1 it was suggested that the 1st party workman was working in his shop and he has given cycle to the customers of W.W. 1 and he has made entries in that behalf in the cycle hire book on 17th February 1971 and 22nd March 1971. At the instance of the 2nd party he has producted the cycle hire book relating to the said period and it is marked is Exhibit M. 3. The 1st party workman is examined as W.W. 2. He states that the 2nd party charged the shop to another premises thereafter on 30th April 1969. He was informed by the

2nd party that there is no work and that he may go. He states that no termination order was issued. No charge-sheet was issued and no enquiry was held He denies that he abandoned his services of the 2nd party. He denies that since 30th April he is working in the Cycle-shop of M. W. 1.

In 1963 II LLJ-638 Buckingham and Carnatic Company Ltd., and Venkatayya and another; The Supreme Court has laid down as follows :—

> "It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drown unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Adandonment or relinquishment of service is always a question of intention and, normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified standing orders; the doctrines of common law or consideration of equity would not be relevant. It is then a matter of construing the relevant term itself."

Bearing in mind the principles laiddown in the above decision the evidence let in on behalf of both the sides will have to be scrutinised to come to the conclusion whether the 1st party workman abandoned his services with 2nd party or 2nd party unjustifiably terminated his services. The 1st party workman denies that he had abandoned the services. M. W. 1 and 2 attempted to make out that the 1st party workman abandoned the services. Now it will have to be seen, which version is to be believed. M. W. 1 states, on the night of 30th April 1969 when the 1st party workman received his pay he has stated that he would not turn up again, If this is the truth, M. W. 2 should have supported this version of M. W. 1. Further, if 1st party workman had really stated as above. It is highly impossible that M. W. 1 whould have sent M. W. 2 on two occasions to fetch the 1st party workman. M. W. 2 states that four days after he left his services he went to the house of the 1st party workman and he called him to come to work, but he refused and intimated the same fact to M.W.1. If this is the fact there appears to be no justification to send M. W. 2 to call the 1st party workman over-again. The manner in which

M. W. 2 states that he went to call 1st party workman to return to his duty appears to be highly artificial. It is attempted to make out that from 30th April 1969 the 1st party workman was working with W. W. 1 after abandoning his services with II party. If W. W. 1 had left his services on the evening of 30th April 1969, after receiving his pay, it is highly impossible that he whould not have worked with W. W. 1 from 30th April 1969. The evidence of W. W. 1 and the 1st party workman is that 1st party workman did not work with W.W.1. W.W.1 has also produced his hire - book Exhibit M.3 in suport of it. From the perusal of M. W. 3 it would be seen that there is nothing to show that the 1st party workman worked with W. W. 1 in respect of the period noted therein. Ex. M3 starts from 2nd January 1971 and the last entry is dated 31st March 1971.

On behalf of the 2nd party is attempted to be made out that Exhibit M 3 got up for the purpose of this case. The manner in which Exhibit M3 is maintained, it will be seen that it is maintained in the ordinary course of business and that is not a book got up for the purpose of this case. From the evidence of W.W. 1 and the 1st party workman it is clear that the evidence of M. W. 1 and 2 stating that after he left the services with the 2nd party he was working with W.W.1 is false. The manner in which W. W. 1. has deposed before this Court, it will be seen that he is a got-up witness. In the course of his evidence M. W. 2 he states that no one called him to come and depose as a witness in this case and he came of his own accord to state what he knew. This version of M.W.2 would show that he is uttering a delebrate false hood if M.W.1 had not called him. I do not think that he would have come and deposed in this case. The manner in which M.W2 has deposed, it will be seen that he is a interested witness. M.W2 had joined service one month before the 1st party workman is stated to abandoned his services. M.W2 states that he worked with M.W.1 for a few months and thereafter he resigned his job with M W.1 and now he is doing the job of fitting cycles independently, before the shop of M.W.1 without paying rent. He appears to be at the mercy of M.W.1. He appears to have come and deposed his tutor by M.W 1. Hence, no value could be attached to his evidence. It is admitted that M.W.1 sent his remarks as per Exhibit W. 1 during the conciliation proceedings. In Exhibit W.1 he has not stated that through M.W.2 he sent for the 1st party workman on two occasions and he did not turnup. The version that M.W.1 sent M.W.2 to fetch the 1st party workman to join his duty, appears to have been set-up later on for the purposes

of this case. In this case, if the 1st party workman had really abandoned his services it is not explained why M.W. 1 failed to issue him a written notice at the earliest stage. In this case, the 1st party workman is the person who approched the conciliation officer to start conciliation proceeding at the first instance. If the intention of the 1st party workman is to abandon the services of 2nd party, it is highly improbable that he would have approached the conciliation officer as stated above. In this case, the conduct of the M.W.1 also should be looked into. Admittedly in the month of April, 69 M.W.1 was running his shop in Sadar Patrappa Road, which is a cross road. Prior to that he was having his shop in the Silver Jubilee Park Road. Admittedly after he shifted his shop to Sadar Patrappa Road, his business fell down. At that time. the 1st party workman was being paid a salary of Rs. 100 p. m. In the month of April, 1969 M. W. 1 appointed M. W. 2 also on a pay of Rs. 60 After the end of the month probably M. W. 1 thought that it is advantageom to retain M. W. 2 to whom he was paying a small sum was paid and terminated the services of the 1st party workman. From the above circumstances it is established that 1st party workman did not abandoned his services and that M W. 1 un-justifiably terminated the services.

It is contended on behalf of the 2nd party that in case, if the Court comes to the conclusion that the 2nd party unjustifiably terminated the services of the 1st party workman, reinstatement cannot be ordered, because the 2nd party is running the concern under a heavy loss, in that behalf, the account books of the 1st party namely Ex. M4 to M. 11 are produced. M. W. I also states that for about 20 months he has lost about 30,000 Rupees in his business. Whether he is running under a loss or not is immeterial for the purpose of this reference. Since it is held that the termination is of the 1st party workman is un-justifiable he will have to be reinstated with continuity of service. Even after the reinstatement if the 2nd party still thinks that he cannot retain the services of the 1st party workman then other lawful Cources are open to him.

The next point for consideration is what backwages the 1st party workman should be granted? In this case M.W.2 states that he is carrying on business under loss. In view of this fact, it appears to me that if reinstatement is ordered with full backwages considerable hardship would be caused to the 2nd party. It appeaars to me that it would meet with end of justice if the 1st party workman is granted 50 per cent of backwages.

In the result I pass an Award directing the second party to reinstate the first party workman in his former post with continuity of service and pay him back wages at 50 per cent from the date of his termination to the date of his reinstatement.
No costs.

A. N. SUNDARA MURTHY,
Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated the 19th May 1971.

S. O. 1106.—WHEREAS by State Government Order No. FCL 105 LLD 70, dated 1st April 1970, the Industrial Dispute between the workmen and the management of Popular Cycle Trading Co., 14/1, Corner Sadar Patrappa Road, Bangalore-2 was referred to the Labour Court, Bangalore for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 56 LLA 71]

By Order and in the name of the President of India,

355 ANIRUDHA DESAI, *Under Secy.*